



BILLING CODE: 3510-DS-P

DEPARTMENT OF COMMERCE

International Trade Administration

[A-570-967; C-570-968]

Aluminum Extrusions from the People's Republic of China: Notice of Second Amended Final Scope Ruling Pursuant to Court Decision

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On March 28, 2017, the Court of Appeals for the Federal Circuit (Federal Circuit) reversed the Court of International Trade (CIT) and sustained the Department of Commerce's (Department) original scope ruling in which it found that Meridian Products LLC's (Meridian) refrigerator/freezer trim kits did not satisfy the finished goods kit exclusion under the antidumping (AD) and countervailing duty (CVD) orders covering aluminum extrusions from the People's Republic of China (PRC). The Department is therefore issuing a second amended final scope ruling.

DATES: Effective [insert date of publication in the *Federal Register*].

FOR FURTHER INFORMATION CONTACT: James Terpstra, AD/CVD Operations, Office III, Enforcement and Compliance, U.S. Department of Commerce, 1401 Constitution Avenue, NW, Washington, DC 20230; telephone: 202-482-3965.

SUPPLEMENTARY INFORMATION:

Background

On December 17, 2012, the Department issued its Final Scope Ruling on Refrigerator Trim Kits in which it determined that the refrigerator/freezer trim kits imported by Meridian did

not meet the scope exclusions for “finished merchandise” and “finished goods kits.”¹ In particular, the Department held that, because the trim kits at issue consisted of pieces of aluminum extrusions plus fasteners and extraneous materials, they did not meet either scope exclusion. Therefore, the Department found the products at issue to be within the scope of the *Orders*.²

As discussed in detail in the Third Remand Results,³ the CIT remanded the Final Scope Ruling on Refrigerator Trim Kits three times.⁴ In *Meridian IV*,⁵ the CIT held that the Department’s long-standing recognition of a “fasteners” exception to the “finished goods kit” exclusion in the scope was unreasonable, finding that “the inclusion of ‘fasteners’ or ‘extraneous materials’ is not determinative when qualifying a kit consistent of multiple parts which otherwise meets the exclusionary requirements, as a ‘finished goods kit.’”⁶ Additionally, the CIT explained that there is nothing in the scope language that indicates that the parts of a finished goods kit cannot consist entirely of aluminum extrusions.⁷ The CIT explained that “to qualify as a ‘finished goods kit’, a kit must contain every part required to assemble the final finished good, and it logically follows that if a kit is imported with all of the parts necessary to fully assemble

¹ The finished goods kit exclusion states: “A finished goods kits is understood to mean a packaged combination of parts that contains, at the time of importation, all of the necessary parts to fully assemble a final finished good and requires no further finishing or fabrication, such as cutting or punching, and is assembled ‘as is’ into a finished product.” The scope further states that, “{a}n imported product will not be considered a ‘finished goods kit’ and therefore excluded from the scope of the investigation merely by including fasteners such as screws, bolts, etc. in the packaging with an aluminum extrusion product.”

² See Memorandum, “Final Scope Ruling on Certain Refrigerator/Freezer Trim Kits, dated December 17, 2012 (Final Scope Ruling on Refrigerator Trim Kits) at 11. See also *Aluminum Extrusions from the People's Republic of China: Antidumping Duty Order*, 76 FR 30650 (May 26, 2011) and *Aluminum Extrusions from the People's Republic of China: Countervailing Duty Order*, 76 FR 30653 (May 26, 2011) (*Orders*).

³ See Final Results of Redetermination Pursuant to Court Remand, *Meridian Products, LLC v. United States*, Court No. 13-00018, Slip. Op. 15-67 (Oct. 29, 2015) (Third Remand Results).

⁴ See Third Remand Results at 6-10.

⁵ See *Meridian Products, LLC v. United States*, Court No. 13-00018, Slip. Op. 15-67 (Oct. 29, 2015) (*Meridian IV*).

⁶ See *Meridian IV*, Slip Op. 15-67 at 12-13.

⁷ *Id.*

the kit into its final finished form, then obviously (and necessarily) some of those ‘parts’ may be fasteners.”⁸

In the Third Remand Results, the Department found, in accordance with the Court’s instructions in *Meridian IV*, under respectful protest, that Meridian’s trim kits are excluded from the scope of the *Orders* as finished goods kits because at the time of importation, the kits contained all the parts necessary to assemble a final finished good – a complete trim kit.⁹ In *Meridian V*,¹⁰ the Court sustained the Third Remand Results in its entirety.¹¹ Subsequently, the Department published a *First Amended Final Scope Ruling* in which the Department found that Meridian’s refrigerator/freezer trim kits are not covered by the scope of the *Orders*.¹² Consistent with the decision of the Federal Circuit in *Timken*,¹³ as clarified by *Diamond Sawblades*,¹⁴ the *First Amended Final Scope Ruling* additionally provided notice to the public of the CIT’s final judgment in *Meridian V* not in harmony with the Department’s Final Scope Ruling on Refrigerator Trim Kits and of the continuation of the suspension of liquidation of the trim kits at issue pending a final and conclusive court decision, if appealed.¹⁵

On March 28, 2017, the Federal Circuit reversed the CIT and sustained the Department’s original scope ruling in which it found that Meridian’s refrigerator/freezer trim kits did not satisfy the finished goods kit exclusion under the *Orders*. In *Meridian VI*,¹⁶ the Federal Circuit found that the plain language of the exclusion language, when appropriately read as a whole,

⁸ *Id.*, at 14 (emphasis omitted).

⁹ See Third Remand Results at 14.

¹⁰ See *Meridian LLC v. United States*, Court No. 13-00018, Slip Op. 16-5 (CIT January 20, 2016) (*Meridian V*).

¹¹ See *Meridian V*, Slip Op. 16-5 at 4.

¹² See *Aluminum Extrusions From the People's Republic of China: Notice of Court Decision Not in Harmony With Final Scope Ruling and Notice of Amended Final Scope Ruling Pursuant to Court Decision*, 81 FR 7749 (February 16, 2016) (*First Amended Final Scope Ruling*).

¹³ See *Timken Co. v. United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*).

¹⁴ See *Diamond Sawblades Mfrs. Coalition v. United States*, 626 F.3d 1374 (Fed. Cir. 2010) (*Diamond Sawblades*).

¹⁵ See *First Amended Final Scope Ruling*, 81 FR at 7749-7750.

¹⁶ See *Meridian Prods., LLC v. United States*, 851 F.3d 1375 (Fed. Cir. Mar. 28, 2017) (*Meridian VI*).

supported the Department's interpretation. The Federal Circuit further held that the Department's prior scope rulings, one of the 19 CFR 351.225(k)(1) sources, further supported the Department's interpretation. Finally, the Federal Circuit looked to other aspects of the scope language, including the similar finished merchandise exclusion, which supported the division of products into two categories: 1) products which contained only aluminum extrusions and fasteners (not excluded); and 2) products which incorporated non-aluminum extrusion components beyond fasteners (excluded).¹⁷

Second Amended Final Scope Ruling

Because there is now a final and conclusive court decision which reinstates the Department's original scope ruling, we are amending the *First Amended Final Scope Ruling* with respect to Meridian's refrigerator/freezer trim kits. Based on the Federal Circuit's holding in *Meridian VI*, Meridian's refrigerator/freezer trim kits are subject to the *Orders*.

Accordingly, the Department will instruct Customs and Border Protection to continue to suspend liquidation of Meridian's refrigerator/freezer trim kits until appropriate liquidation instructions are sent. As of the date of publication of this notice in the *Federal Register*, the cash deposit rate for entries of Meridian's refrigerator/freezer trim kits entries will be the applicable cash deposit rate of the exporters of the merchandise from the PRC to the United States.

¹⁷ *Id.*, at 1383-85.

This notice is issued and published in accordance with sections 516A(c)(1) and (e)(1) of the Tariff Act of 1930, as amended.

Gary Taverman
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for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

Dated: July 11, 2017.

[FR Doc. 2017-15040 Filed: 7/17/2017 8:45 am; Publication Date: 7/18/2017]